

1 courtdocs@dickinsonwright.com

2 Katherine Anderson Sanchez, SBN 030051
3 DICKINSON WRIGHT PLLC
4 1850 North Central Avenue, Suite 1400
5 Phoenix, Arizona 85004
6 Phone: (602) 285-5000
7 Fax: (844) 670-6009
8 ksanchez@dickinsonwright.com
9 Attorneys for Plaintiff Wells Fargo Bank, NA

7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

10 Wells Fargo Bank, N.A.,

Case No. 2:17-02492-PHX-DJH

11 Plaintiff,

12 v.

13 PenbenLA, a California entity, Equa
14 Gaming, an Arizona general partnership,
15 Victor Carrillo, an individual, Dana M.
16 Brannan, an individual, and Does I-X,

17 Defendants.

18

19 **SEPARATE STATEMENT OF FACTS**
20 **IN SUPPORT OF MOTION FOR**
21 **SUMMARY JUDGMENT AS TO**
22 **DEFENDANT FERRUGGIO**
23 **INSURANCE SERVICES OF L.A.**
24 **DOING BUSINESS AS PENBENLA**
25 **ON COUNT ONE**

26 Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Plaintiff Wells
19 Fargo Bank, N.A. (the “Plaintiff” or “Wells Fargo”), by and through undersigned
20 counsel, respectfully submits its Separate Statement of Facts in Support of Plaintiff’s
21 Motion for Summary Judgment as to Defendant Ferruggio Insurance Services of L.A.,
22 Inc. doing business as PenbenLA (“Defendant”) as follows:

23

24 **Statement of Facts**

25 1. On or about August 28, 2009, Equa Gaming, an Arizona general partnership

1 ("Equa Gaming"), opened a business account ending in 4583 at Wells Fargo (the "Account").
2

3 **Exhibit A.**

4 2. Victor Carrillo ("Carrillo") and Dana Brannan ("Brannan") signed the
application for the Account as owners/key individuals. Exhibit A.

5 3. Carrillo had been a customer of Wells Fargo since approximately May 28, 2004.

6 Exhibit A.

7 4. On or about March 12, 2016, Defendant issued check number 2630 drawn upon
Pacific Western Bank and made payable to Equa Gaming in the amount of \$100,000.00 (the
9 "Check"). **Exhibit B, Exhibit C** at 14:18-15:3; 18:15-23.

10 5. The Check was signed by an authorized representative of Defendant. Exhibit C
at 18:19-23.

11 6. On March 12, 2016, Defendant deposited the Check into the Account at a Wells
Fargo branch in Culver City, California. Exhibit C at 14:21-22; 18:19-23; 29:17-23 (depo
13 transcript), **Exhibit D**, Bank statement.

14 7. Wells Fargo accepted the Check for deposit in to the Account. Exhibit A.

15 8. Wells Fargo is currently in possession of an Image Replacement Document
16 ("IRD") of the Check and has been in possession of the IRD for the Check at all relevant times.

17 Exhibit A.

18 9. Defendant deposited the Check for the stated purpose of causing \$100,000 to be
immediately available to Equa Gaming. Exhibit C at 25:11-25.

20 10. The Check bore no apparent evidence of forgery or alteration. Exhibit A.

21 11. On or about March 14, 2016, the Check was posted to the Account. The funds
22 were available for withdrawal on March 15, 2016. Exhibit A, Exhibit B, Exhibit D.

23 12. After March 14, 2016 various debits and withdrawals were made from the
Account. Exhibit D.

24 13. Upon information and belief on March 15 or 16, 2016, Defendant directed
25 Pacific Western Bank to stop payment on the Check. Exhibit C at 33:7-9.
26

14. On or about March 16, 2016, the Check was returned unpaid from Pacific Western Bank. Exhibit A, Exhibit D.

DATED: August 1, 2018

DICKINSON WRIGHT PLLC

By: /s/ Katherine Anderson Sanchez

Katherine Anderson Sanchez
1850 N. Central Avenue, Suite 1400
Phoenix, AZ 85004
(602) 285-5000
*Attorneys for the Plaintiff Wells Fargo
Bank, N.A.*

Copies of the foregoing served via email and U.S. Mail this 1st day of August, 2018 on:

SCOTT A SWINSON PA
Scott A Swinson
2400 E Arizona Biltmore Cir.,
Ste. 1300
Phoenix, AZ 85016-2195
scott@swinsonlawaz.com
*Attorneys for Defendant Ferruggio Insurance
Services of L.A., Inc. dba PenbenLA*

/s/ Janet Hawkins

PHOENIX 16019-70 482517v1